

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**SECOND APPELLATE DISTRICT**  
**DIVISION THREE**

In re: JUAN H.,  
A Person Coming Under  
The Juvenile Court Law.

---

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and Respondent,

vs.

JUAN H.,  
Defendant and Appellant.

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Court of Appeal  
No. B247710

Superior Court  
No. VJ42477

**APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES**

Honorable Philip Mautino, Judge

**APPELLANT'S OPENING BRIEF**

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By Appointment of the Court of Appeal  
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**STATEMENT OF THE CASE<sup>1</sup>**

On November 26, 2012, a juvenile petition was filed against appellant, Juan H., alleging one felony count of possession of marijuana for sale in violation of Health and Safety Code section 11359. (CT 36-38.) On February 11, 2013, an adjudication was held, the petition was sustained, and appellant was declared a ward of the court pursuant to Welfare and Institutions Code section 602. (CT 88-89.) Appellant was ordered to serve

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<sup>1</sup> The Statement of the Case and Statement of Facts includes only the information relevant to this second juvenile petition, as this is the only information relevant to the issue raised in this Brief.

30 days in juvenile hall with credit for two days pre-disposition custody. (CT Supp. 13-14.)

Appellant filed a timely notice of appeal on March 15, 2013. (CT 90-91.) This appeal is from a final judgment entered pursuant to Welfare and Institutions Code section 602 and is authorized by section 800.

### **STATEMENT OF FACTS**

On November 20, 2012 at 4:40 p.m., Deputies Michael Duff and Michael Mabee were on patrol when they saw four male Hispanics who looked in the deputies' direction and then began walking away from them. (RT 8-9, 43.) Duff observed appellant throw two small objects on the ground beside him. (RT 10.) The deputies detained the four individuals and Duff recovered the two objects appellant threw away. (RT 11.) The two objects were two small ziplock bags containing a green leafy substance resembling marijuana. (RT 11.)

Duff searched appellant and found a plastic bag in his right jacket pocket, which contained approximately 50 small ziplock bags, and a medium-sized glass jar containing a "substantial amount" of the same substance. (RT 16-17.) Duff also recovered a red pill bottle from appellant's left pocket that contained the same substance. (RT 17.) Appellant told Duff he was taking the marijuana to meet his friends and was packaging the marijuana for personal use. (RT 22, 39.) Appellant denied he intended to sell the marijuana or give it away. (RT 22.)

Duff testified that the area is well known for narcotic sales, especially marijuana, and opined that the marijuana in appellant's possession could have filled 14 or 15 of the small baggies. (RT 15, 19.) Duff later said he meant 50 bags. (RT 40.) Duff admitted no other indicia of sales was found on appellant, such as a scale, pay/owe sheets, a cell

phone, or cash. (RT 30-31, 33, 38-39.) Duff did not observe any sales, money changing hands, baggies changing hands, or hear any conversations about sales. (RT 29.) Duff also admitted that five to six grams of marijuana could be possessed for personal use and the entire amount of marijuana found on appellant would only be enough to make five small marijuana cigarettes, or blunts, or two to three tobacco-sized cigarettes. (RT 34, 29.) The total amount of marijuana found on appellant was 3.02 grams. (RT 54.)

### **ARGUMENT**

**I. There was insufficient evidence to establish that appellant possessed the marijuana for sale and not for personal use.**

The prosecution bears the burden to prove the defendant is guilty of the crime charged beyond a reasonable doubt. (*In re Winship* (1970) 397 U.S. 358, 362 [90 S.Ct. 1068, 25 L.Ed.2d 368].) The standard for the claim that the evidence at trial was insufficient to support an appellant's conviction is “whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 576; accord, U.S. Const., 6<sup>th</sup> & 14<sup>th</sup> Amends.; *Jackson v. Virginia* (1979) 443 U.S. 307, 318 [99 S.Ct. 2781, 61 L.Ed.2d 560].) Where substantial evidence does not exist, both federal and state due process are offended. (U.S. Const., 14<sup>th</sup> Amend.; Cal. Const., Art. I, § 15; *Jackson v. Virginia, supra*, 443 U.S. at p. 318; *People v. Johnson, supra*, 26 Cal.3d at p. 576.)

The court must review the trial record “to determine whether it discloses substantial evidence.” (*People v. Johnson, supra*, 26 Cal.3d at p. 576.) Although the record should be reviewed “in the light most favorable to the judgment below . . . the . . . whole record--i.e., the entire picture of

the defendant put before the jury” must be reviewed, instead of merely the evidence favorable to the prosecution. (*Id.* at p. 577; see also *In re Frank S.* (2006) 141 Cal.App.4th 1192, 1196.) Substantial evidence is evidence that is “reasonable, credible, and of solid value.” (*Id.* at p. 578; see also *In re Frank S., supra*, 141 Cal.App.4th at p. 1196.)

A conviction cannot be based on “mere speculation.” (*People v. Marshall* (1997) 15 Cal.4th 1, 35.) In any given case, one “may speculate about any number of scenarios that may have occurred. . . . A reasonable inference, however, may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. . . . A finding of fact must be an inference drawn from evidence rather than . . . a mere speculation as to probabilities without evidence.” (*People v. Morris* (1988) 46 Cal.3d 1, 21, internal quotations omitted; see also *People v. Raley* (1992) 2 Cal.4th 870, 891; *People v. Memro* (1985) 38 Cal.3d 658, 695.) Assumptions do not constitute evidence of “ponderable legal significance...reasonable in nature, credible, and of solid value,” and cannot support a conviction. (*People v. Johnson, supra*, 26 Cal.3d at p. 577, citing *Estate of Teed* (1952) 112 Cal.App.2d 638, 644.)

Health and Safety Code section 11359 prohibits possession of marijuana for sale. Apart from the plastic bags found in appellant’s possession, there was no other indication appellant possessed the marijuana for sale and, in fact, stated he was dividing it up for his own personal use. As Duff admitted, there was no other indication the marijuana was possessed for purposes of selling it. Appellant was not using a scale to divide the marijuana, which is often used to ensure the seller is not giving away too much marijuana in each sale. Appellant did not have a cell phone



on his person. Moreover, although Duff said the marijuana could fill anywhere from 14 to 50 bags, he also admitted the entire 3.02 grams would only make 5 small marijuana cigarettes or two to three regular sized cigarettes. Given this testimony, it seems that Duff was merely speculating when he opined that the marijuana could be packaged into anywhere from 14 to 50 bags.

In light of Duff's confusing, and sometimes contradictory, testimony and the evidence that supported appellant's admission that he possessed the marijuana for his own personal use, the evidence did not support the trial court's finding because it was based on Duff's conclusions, which in turn were based solely on speculation. As discussed above, "[a] reasonable inference...may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. . . . A finding of fact must be an inference drawn from evidence rather than . . . a mere speculation as to probabilities without evidence." (*People v. Morris, supra*, 46 Cal.3d at p. 21, internal quotations omitted; see also *People v. Raley, supra*, 2 Cal.4th at p. 891; *People v. Mermo, supra*, 38 Cal.3d at p. 695.) Moreover, assumptions do not constitute evidence of "ponderable legal significance...reasonable in nature, credible, and of solid value" and cannot support a conviction. (*People v. Johnson, supra*, 26 Cal.3d at p. 577.) Since Duff's speculation and assumptions are all that supports the court's true finding of possession for sale, the adjudication must be reversed.

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### **CONCLUSION**

For the reasons set forth above, the adjudication must be reversed because there was insufficient evidence to support the trial court's true finding beyond a reasonable doubt.

Dated: September 25, 2013

Respectfully submitted,  
LAW OFFICES OF SARAH A.  
STOCKWELL

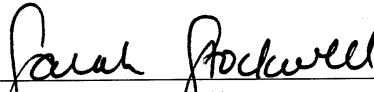
A handwritten signature in black ink, reading "Sarah Stockwell". The signature is written in a cursive, flowing style with a large initial 'S'.

Sarah A. Stockwell  
Attorneys for Minor and Appellant

## **CERTIFICATION OF WORD COUNT**

Appellate counsel certifies in accordance with California Rules of Court, rule 8.360(b)(1), that this brief contains 1,296 words as calculated by the Apple Pages software in which it was written.

September 25, 2013

  
\_\_\_\_\_  
Sarah A. Stockwell  
Attorneys for Minor and Appellant

## DECLARATION OF SERVICE

Case Name: JUAN H.

Court of Appeal No. B247710

Superior Court No. VJ42477

I declare I am employed in the County of Orange, California. I am over 18 years of age and not a party to the within entitled cause; my business address is Post Office Box 426, Tustin, California 92781.

On September 25, 2013, I served the attached APPELLANT'S OPENING BRIEF, of which a true and correct copy of the document filed in the cause is affixed, by placing a copy thereof in a separate envelope for each addressee as follows:

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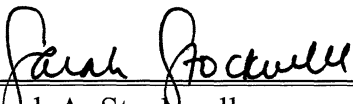
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Each envelope was sealed and with postage thereon fully prepaid deposited in the United States mail by me at Tustin, California on September 25, 2013.

I declare under penalty of perjury that the foregoing is true and correct.  
This declaration was executed at Tustin, California on September 25, 2013.

  
\_\_\_\_\_  
Sarah A. Stockwell